

# **Exhibit 10**



THE STATE OF PENNSYLVANIA

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

Master File No. 1:00-1898  
MDL NO. 1358 (SAS)

Commonwealth of Pennsylvania, etc. v. Exxon  
Mobil Corporation, et al, No. 1:14-cv-06228-  
SAS

Expert Report of Bruce F. Burke

A handwritten signature in blue ink that reads "Bruce F. Burke".

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Bruce F. Burke  
NexantECA, Inc.  
Atlanta Georgia  
March 8, 2021

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### **FUNGIBILITY AND COMMINGLING OF GASOLINE**

96. A critical aspect of gasoline shipping in the United States is the use of “fungible” gasoline as the primary mode of movement. Within the U.S. gasoline distribution industry, the term “fungible” means that “the quality of a particular batch of fuels meets minimum agreed-upon specifications, and may be mixed with similar fuels (of the same type, octane grade, and RVP class) made by other refiners for shipment and use.”<sup>31</sup> The commingling associated with shipping fungible gasoline, is discussed in Paragraph 85.

97. Based on my knowledge of the industry, as well as a review of relevant statements made by key pipelines in the distribution system supplying the U.S. East Coast, the vast majority of gasoline shipped by pipeline and through the terminal distribution system is “fungible”, as opposed to “segregated”. Thus, the typical mode of shipment of gasoline from production at refineries, shipping through pipelines or ships, into terminals, and then by truck to retail service stations operation, does not allow for tracking of individual shipments of gasoline from the producing refinery to the final retail customer. This conclusion is supported by a number of quotations that follow from the major pipelines that service the East Coast market for gasoline. Specifically these include statements by the Colonial Pipeline, the Buckeye Pipeline, and the Sun Pipeline, which combined, represent the primary pipelines that supply, either directly or indirectly, the East Coast market, including the State of Pennsylvania.

98. The **Colonial Pipeline** states that it does not segregate the petroleum products shipped on the Colonial Pipeline unless explicitly put in a segregated batch. Specifically, the Colonial Pipeline states:

- “Fungible products shipped on the Colonial system are generic products. These products meet published specifications. Shippers will receive equivalent product but may not get back the actual product shipped. Segregated products are branded products or blendstock materials. On segregated shipments shippers receive the same product they injected into the system.”<sup>32</sup>
- Colonial’s minimum quantity or “tender” of products to be shipped on a segregated batch basis is 75,000 barrels. However, several shippers may make up joint fungible batches by tendering a minimum of 25,000 barrels each.”<sup>33</sup>

The Colonial representative states that there are specifications for the movement of product in order to create fungibility and to be able to move the product successfully.<sup>34</sup>

“...We ship two terms that we use are “segregated,” and “fungible,” where we would ship a product separate from other products, so to speak, or we would commingle, which is another term for fungible, where we take product from multiple suppliers and mix them in one single batch.”<sup>35</sup>

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<sup>31</sup> Responses of Defendant Atlantic Ritchfield Company to Discovery Requests in Case Management Order No. 4, Paragraph III.B.2, Page 8

<sup>32</sup> [http://www.colpipe.com/ab\\_faqs.asp](http://www.colpipe.com/ab_faqs.asp)

<sup>33</sup> [http://www.colpipe.com/ab\\_faqs.asp](http://www.colpipe.com/ab_faqs.asp)

<sup>34</sup> Brown, James Edward – January 18, 2008 10:05:00 a.m. Volume:1, Page 22

<sup>35</sup> Brown, James Edward – January 18, 2008 10:05:00 a.m. Volume:1, Page 33